IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 263 OF 2006

M/s. Godrej Soaps Ltd., .. Petitioners.

vs.

V.R. Ajgekar

& Ors. .. Respondents.

Mr. M.M. Varma a/w Rajesh Gehani

for petitioners.

Mr. Shailesh Pathak i/by Haresh Mehta & Co.

for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 6th March, 2006.

P.C.:

. The present petition challenges the order passed by the Industrial Court at Bombay in Complaint (ULP) No. 1385 of 1999 dated 29.9.2005. By the said order the complaint of the workmen is partly allowed and it is declared that the petitioner have committed unfair labour practices under items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

The respondents are further directed to pay the balance amount of bonus/ex-gratia after deducting the payment already made of Rs. 6000/- to the complainant workman within a period of one month from the date of the order failing which the respondent company is liable to pay interest at the rate of 9% per annum till payment.

2. The learned counsel for the petitioners has contended that the order is perverse and liable to be set aside. He has contended that 20% bonus is given only to those workers who are working in the factory and the same is linked with productivity and thus all employees are not entitled to the benefit of 20% bonus. In support of the aforesaid contention he has relied upon section 31 A of the Payment of Bonus Act, 1965. The said provision of Section 31 A reads as under :

> "31A. Special provision with respect to payment of bonus linked with production or productivity.-- Notwithstanding anything contained in this Act,--
>
> (i) where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act,

1976 (23 of 1976), or

(ii) where the employees enter into any agreement or settlement with their employer after such commencement,

for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

[Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right;]

[Provided further that] such employees shall not be entitled to be paid such bonus in excess of twenty per cent, of the salary or wage earned by them during the relevant accounting year."

3. He has further relied upon the memorandum of settlement entered into between the petitioners and

the workman attached to Vikhroli factory from 1999. The said memorandum of settlement inter alia provides for payment of 20% of the bonus to all those who are on the rolls of the company on the date of signing of the said settlement. Clauses 1 and 2 of the said agreement read as under :-

1) It is agreed and understood that this Settlement shall be an Agreement under Section 31-A of the Payment of Bonus Act 1965 for granting bonus at a quantum which is mutually acceptable to both the parties to the Settlement.

2) The Company agrees to pay, as a special case and without laying a precedent, the workmen of Vikhroli factory who are not covered under the Payment of Bonus Act, bonus/ex-gratia amount will be computed on the maximum salary or wage of Rs. 2500/- per month, subject to a maximum bonus/ex-gratia amount of Rs. 6,000/-. The bonus/ex-gratia amount agreed upon under this clause, shall be payable only to those who are on the rolls of the Company on the date signing this agreement. However, as a special case, the management agrees to pay bonus/ex-gratia to the following categories of ex-workmen;

A) Superannuated employees; and

B) Legal heirs of the deceased."

Clause 3 provides that eligible workmen who have put in less than 240 days during the calendar year 1998 are not eligible to earn privilege leave during the calendar year 1999 and will be paid pro-rata bonus/ex-gratia for the financial year 1998-99. Under clause 5 of the said agreement it is provided that the union and the workmen accept the above in full and final settlement of all their claims for bonus/ex-gratia for the year 1998-99. Some of the employees of the petitioners were paid bonus at the rate of 20% whereas some of the employees were paid only 8.33% of the bonus amount. Pursuant thereto the said employees who have been deprived of the bonus at the rate of 20% have filed the aforesaid complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for the purpose of direction that they should be paid at the rate of 20%. The trial Court has considered the matter at length and has given its reasonings. The reasons given by the trial Court inter alia mention that the contention of the petitioners that the petitioners are only liable to pay 20% bonus to those persons who are working as workers in the factory of the petitioners at Vikhroli and are not liable to make payment of bonus at the rate of 20% to all other

employees who are not concerned or connected with the manufacturing activities has been rejected. While rejecting the aforesaid contention the trial Court has come to a conclusion that though the said agreement has been entered into for the year 1998-99 but even for the year 2000-01 and 2001-02 all the workers have been paid bonus at the rate of 20%. The witnesses of the petitioners have admitted the aforesaid fact and have also admitted that the bonus at the rate of 20% was paid to the workers as mentioned in Exhibit U-15 which is produced before the trial Court. The trial Court has further held that from the record it has been revealed that the settlement was arrived at which is Exhibit C-11 and under that all workers of the company are entitled to 20% bonus. I have perused the memorandum of settlement which has been produced before me by the petitioners. The relevant portion of the said memorandum of settlement reads as under :-

> "The bonus/ex-gratia amount agreed upon under this clause, shall be payable only to those who are on the rolls of the Company on the date signing this agreement."

The said clause 2 of the agreement is unequivocally clear to state that all the persons who are on the rolls of the company on the date of the signing of

the agreement will be entitled to bonus/ex-gratia amount agreed upon under this clause. There is no dispute that the complainants are also on the rolls of the company as on the date of the signing of the said agreement. The only question which has been raised is that the memorandum of settlement does not apply to those employees who are not concerned with the manufacturing activities because it is production linked bonus. On perusal of the entire memorandum of settlement, I find that no were any such clause is provided requiring any incentive bonus on the basis of production or level of production to be achieved by an employee. In my opinion, the memorandum of settlement clearly applies to all the employees who are on the rolls of the company on the date of signing of the memorandum of settlement and were working in factory at Vikhroli plant of the company whether they were working in actual manufacturing process of the factory production of the petitioners or otherwise. Apart from the aforesaid, I find that there is no error in the findings given by the learned Industrial Court while holding that in various years in respect of the said memorandum of settlement all the employees are given the bonus of 20% and not at 8.33%. In the light of the aforesaid, I do not find any infirmity in the order passed by the Industrial Court and thus the petition fails. Petition is dismissed accordingly.

. The learned counsel for the petitioners seeks stay of the order for the period of 8 weeks. Stay refused.